

SENATE, No. 2254

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 8, 2022

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

SYNOPSIS

Prohibits selection of health insurance coverage as primary under personal injury protection coverage.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/20/2022)

1 AN ACT concerning personal injury protection and automobile
2 insurance and amending P.L.1983, c.362 and P.L.1972, c.70.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 12 of P.L.1983, c.362 (C.39:6A-4.2) is amended to
8 read as follows:

9 Primacy of coverages. **【**Except as provided in subsection d. of
10 section 13 of P.L.1983, c.362 (C.39:6A-4.3), the**】** The personal
11 injury protection coverage of the named insured shall be the
12 primary coverage for the named insured and any resident relative in
13 the named insured's household who is not a named insured under an
14 automobile insurance policy of his own. No person shall recover
15 personal injury protection benefits under more than one automobile
16 insurance policy for injuries sustained in any one accident. No
17 automobile insurer shall permit the selection of other health
18 insurance coverage or benefits as the primary coverage in regard to
19 medical expense benefits pursuant to section 4 of P.L.1972, c.70
20 (C.39:6A-4).

21 (cf: P.L.1990, c.8, s.5)

22

23 2. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to
24 read as follows:

25 13. Personal injury protection coverage options. With respect to
26 personal injury protection coverage provided on an automobile in
27 accordance with section 4 of P.L.1972, c.70 (C.39:6A-4), the
28 automobile insurer shall provide the following coverage options:

29 a. Medical expense benefit deductibles in amounts of \$500.00,
30 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

31 b. The option to exclude all benefits offered under
32 subsections b., c., **【d.,】** and e. of section 4;

33 c. (Deleted by amendment, P.L.1988, c.119.)

34 d. **【**For policies issued or renewed on or after January 1, 1991,
35 the option that other health insurance coverage or benefits of the
36 insured, including health care services provided by a health
37 maintenance organization and any coverage or benefits provided
38 under any federal or State program, are the primary coverage in
39 regard to medical expense benefits pursuant to section 4 of
40 P.L.1972, c.70 (C.39:6A-4). If health insurance coverage or
41 benefits are primary, an automobile insurer providing medical
42 expense benefits under personal injury protection coverage shall be
43 liable for reasonable medical expenses not covered by the health
44 insurance coverage or benefits up to the limit of the medical
45 expense benefits coverage. The principles of coordination of

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 benefits shall apply to personal injury protection medical expense
2 benefits coverage pursuant to this subsection; **】** (Deleted by
3 amendment, P.L. _____, c. _____) (pending before the Legislation as this
4 bill)

5 e. Medical expense benefits in amounts of \$150,000, \$75,000,
6 \$50,000 or \$15,000 per person per accident; except that, medical
7 expense benefits shall be paid in an amount not to exceed \$250,000
8 for all medically necessary treatment of permanent or significant
9 brain injury, spinal cord injury or disfigurement or for medically
10 necessary treatment of other permanent or significant injuries
11 rendered at a trauma center or acute care hospital immediately
12 following the accident and until the patient is stable, no longer
13 requires critical care and can be safely discharged or transferred to
14 another facility in the judgment of the attending physician. The
15 coverage election form shall contain a statement, clearly readable
16 and in 12-point bold type, in a form approved by the commissioner,
17 that election of any of the aforesaid medical expense benefits
18 options results in less coverage than the \$250,000 medical expense
19 benefits coverage mandated prior to the effective date of P.L.1998,
20 c.21.

21 If none of the aforesaid medical expense benefits options is
22 affirmatively chosen in writing, the policy shall provide \$250,000
23 medical expense benefits coverage;

24 f. The insurer shall provide an appropriate reduction from the
25 territorial base rate for personal injury protection coverage for those
26 electing any of the options in subsections a., b., **【d.】** and e. of this
27 section.

28 **【**Any named insured who chooses the option provided by
29 subsection d. of this section shall provide proof that he and
30 members of his family residing in his household are covered by
31 health insurance coverage or benefits in a manner and to an extent
32 approved by the commissioner. Nothing in this section shall be
33 construed to require a health insurer, health maintenance
34 organization or governmental agency to cover individuals or
35 treatment which is not normally covered under the applicable
36 benefit contract or plan. If it is determined that an insured who
37 selected or is otherwise covered by the option provided in
38 subsection d. of this section did not have such health coverage in
39 effect at the time of an accident, medical expense benefits shall be
40 payable by the person's automobile insurer and shall be subject to
41 any deductible required by law or otherwise selected as an option
42 pursuant to subsection a. of this section, any copayment required by
43 law and an additional deductible in the amount of \$750. **】**

44 An option elected by the named insured in accordance with this
45 section shall apply only to the named insured and any resident
46 relative in the named insured's household who is not a named
47 insured under another automobile insurance policy, and not to any
48 other person eligible for personal injury protection benefits required

1 to be provided in accordance with section 4 of P.L.1972, c.70
2 (C.39:6A-4).

3 Medical expense benefits payable in any amount between the
4 deductible selected pursuant to subsection a. of this section and
5 \$5,000.00 shall be subject to the copayment provided in the policy,
6 if any.

7 No insurer or health provider providing benefits to an insured
8 who has elected a deductible pursuant to subsection a. of this
9 section shall have a right of subrogation for the amount of benefits
10 paid pursuant to a deductible elected thereunder or any applicable
11 copayment.

12 The Commissioner of Banking and Insurance shall adopt rules
13 and regulations to effectuate the purposes of this section and may
14 promulgate standards applicable to the coordination of personal
15 injury protection medical expense benefits coverage.

16 (cf: P.L.1998, c.22, s.3)

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18 3. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to
19 read as follows:

20 12. Inadmissibility of evidence of losses collectible under
21 personal injury protection coverage. Except as may be required in
22 an action brought pursuant to section 20 of P.L.1983, c.362
23 (C.39:6A-9.1), evidence of the amounts collectible or paid under a
24 standard automobile insurance policy pursuant to sections 4 and 10
25 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10), amounts collectible or
26 paid for medical expense benefits under a basic automobile
27 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-
28 3.1) and amounts collectible or paid for benefits under a special
29 automobile insurance policy pursuant to section 45 of P.L.2003,
30 c.89 (C.39:6A-3.3), to an injured person, including the amounts of
31 any deductibles, copayments or exclusions, [including exclusions
32 pursuant to subsection d. of section 13 of P.L.1983, c.362
33 (C.39:6A-4.3),] otherwise compensated is inadmissible in a civil
34 action for recovery of damages for bodily injury by such injured
35 person.

36 The court shall instruct the jury that, in arriving at a verdict as to
37 the amount of the damages for noneconomic loss to be recovered by
38 the injured person, the jury shall not speculate as to the amount of
39 the medical expense benefits paid or payable by an automobile
40 insurer under personal injury protection coverage payable under a
41 standard automobile insurance policy pursuant to sections 4 and 10
42 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10), medical expense
43 benefits under a basic automobile insurance policy pursuant to
44 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits under a
45 special automobile insurance policy pursuant to section 45 of
46 P.L.2003, c.89 (C.39:6A-3.3) to the injured person[, nor shall they
47 speculate as to the amount of benefits paid or payable by a health
48 insurer, health maintenance organization or governmental agency

1 under subsection d. of section 13 of P.L.1983, c.362 (C.39:6A-
2 4.3)].

3 Nothing in this section shall be construed to limit the right of
4 recovery, against the tortfeasor, of uncompensated economic loss as
5 defined by subsection k. of section 2 of P.L.1972, c.70 (C.39:6A-2),
6 including all unreimbursed medical expenses not covered by the
7 personal injury protection limits applicable to the injured party and
8 sustained by the injured party, including the value of any
9 deductibles and copayments incurred through a driver's secondary
10 insurance coverage and medical liens asserted by a health insurance
11 company related to the treatment of injuries sustained in the
12 accident. Medical expenses shall be subject to the current
13 automobile medical fee schedules established pursuant to section 10
14 of P.L.1988, c.119 (C.39:6A-4.6). In any case in which the
15 recovery is for medical expenses only, a prevailing claimant shall
16 be entitled to reasonable and necessary attorneys' fees incurred by
17 the prevailing claimant in the collection of such medical expenses.
18 (cf: P.L.2019, c.245, s.2)

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20 4. This act shall take effect immediately and shall apply to all
21 plans that are delivered, issued, executed or renewed in this State,
22 or approved for issuance or renewal in this State by the
23 Commissioner of Banking and Insurance, on or after the effective
24 date of this act.

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STATEMENT

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29 The bill removes a provision under current law allowing the
30 selection of health insurance coverage as the primary payer for
31 personal injury protection coverage and prohibits that practice.
32 Instead, the bill requires the personal injury protection coverage of
33 the named insured to be the primary coverage for the named insured
34 and any resident relatives in the named insured's household who are
35 not named insureds under an automobile insurance policy of their
36 own.